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**Comments on behalf of the
Chemical Industry Council of California (CICC)
1025 K St., Suite 46, Sacramento, CA 95814**

VIA ELECTRONIC MAIL

December 3, 2004

Mr. Tim Hall
California Integrated Waste
Management Board
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Sacramento, CA 95814
timothyh@ciwmb.ca.gov

Mr. Dmitri Smith
California Integrated
Waste Management Board
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Re: Cal/EPA EJ Action Plan Implementation: CICC's comments regarding the definition of "Precautionary Approaches" or "Precautionary Approach."

Dear Mr. Hall and Mr. Smith:

The Chemical Industry Council of California (CICC) is a voluntary trade association comprised of large and small chemical manufacturers and distributors throughout California representing 105 facilities, including: 43 manufacturing plants, five research labs, and 67 sales, service and distribution centers. Our California members account for annual sales in excess of \$3,000,000,000 and directly employ more than 5700 workers, with combined annual payroll in excess of \$283,000,000. An additional 11,000 indirect jobs are created by CICC member companies with a combined annual payroll of some \$360,000,000. Our purpose is to provide a means for individual companies to combine their talents and resources to deal effectively with public policy issues affecting the chemical industry in California.

CICC has heretofore monitored the Cal/EPA Environmental Justice Action Plan (the "EJ Action Plan") implementation process from afar, however, in light of recent developments we now feel compelled to comment. The following are CICC's comments regarding the application and definition of "Precautionary Approaches" or "Precautionary Approach."

- 1. The EJ Action Plan's sections on precautionary approaches are based on the recognition that Cal/EPA and the BDOs already use a precautionary approach in many of their programs.**

Under Cal/EPA's EJ Action Plan, Cal/EPA Boards, Departments and the Office of Environmental Health Hazard Assessment ("OEHHA") will:

- "Develop a working definition of "precautionary approaches" (Phase 1);
- "Inventory where/how precautionary approaches are used in Cal/EPA's environmental programs, and any obstacles to limit precautionary actions" (Phase 2);
- "Evaluate whether additional precaution may be warranted in Cal/EPA's environmental justice programs to address or prevent environmental justice problems" (Phase 3);
- "Identify reasonable, cost-effective approaches that could be used to prevent or minimize adverse environmental impacts" (Phase 3); and
- "Develop guidance on precautionary approaches and recommend implementation options, including proposals for policy regulatory and statutory changes" (Phase 5).

In drafting this language, Cal/EPA recognized that the BDOs already use a precautionary approach in many of their programs. During the EJ Advisory Committee's process in 2002 and 2003, the Committee received comments regarding the Wingspread Statement which states, "When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof."

The CICC finds the Wingspread Statement or Precautionary Principle as it has come to be better known entirely unworkable and counterproductive. As an alternative to the precautionary principle, CICC supports language proposed in writing by the California Council of Environment and Economic Balance (CCEEB) and shared with the Advisory Committee on March 18, 2003, by CCEEB's representative Cindy Tuck.

CCEEB's suggestion resulted in the Advisory Committee (at Page 21 of the Committee's report) recommendation that the BDOs: "Identify, for each BDO, significant decision points or processes within existing and developing programs where a **precautionary approach is currently used** or could be use, and evaluate whether additional precaution is needed to address or prevent environmental justice problems." [Emphasis added.]

Cal/EPA based key parts of the Action Plan language quoted above on this language from the Advisory Committee. The steps under the EJ Action Plan will allow Cal/EPA to become more transparent in the process that the Agency goes through in making decisions and to identify where additional precaution is needed and to address those gaps with reasonable, cost-effective approaches.

2. CICC suggests Cal/EPA define "precautionary approach" as follows:

"Precautionary Approach means the application of judicious and responsible decision making based on best available science and on the weighing of the level of scientific uncertainty and the potential risk of damage. A precautionary approach is based on the

recognition that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm.”

This statement is based on language from the document that Cal/EPA has referenced in the recent workshops from the U.S. Commission on Ocean Policy and the Canadian document entitled A Framework for the Application of Precaution in Science-Based Decision Making About Risk. We believe this suggested definition captures the precautionary approach that Cal/EPA uses in its science-based decision-making.

3. Several entities have made statements on (or “definitions” of) the use of precaution. What becomes critical for ensuring that implementation is reasonable and not extreme is not just the definition but additionally what are the guidelines or guiding principles for implementation.

The definition that Cal/EPA develops will be an important one, but guidelines or guiding principles will be needed to ensure that implementation of the Action Plan is reasonable. CICC supports guidelines that are consistent with our understanding of how the BDOSs currently exercise precaution in their programs.

- The criteria for triggering the precautionary approach should be clear. For example, mere speculation about potential harm should **not** trigger review under the precautionary approach.
- Once review under the precautionary approach is triggered, the first level of decision is whether Agency action is needed.
- If action is needed, the appropriate action will depend on the level of scientific uncertainty about the risk and the potential risk of damage. The action should be targeted at the sources of the risk in an equitable fashion.
- If agency action is needed, the appropriate action can be selected from a range of actions depending on the level of scientific uncertainty and the potential risk of damage. Such actions may include: 1) information and guidance; 2) public awareness/involvement/education campaigns, 3) research, monitoring or further data collection; 4) incentive programs; 5) command and control regulations; and 6) risk reduction programs including the selection of pollution prevention practices by businesses, etc.
- The process should be transparent.
- The precautionary approach should take into account the **benefits** of the activity or project in determining what is the appropriate action (i.e., in making the risk management decision).
- Required measures should be effective, reasonable, feasible, cost effective and equitable.
- The process should recognize that it is impossible to prove a negative.
- Fair and consistent application is important.
- Environmental program decisions have impacts beyond environmental protection. While protecting public health and the environment, Cal/EPA needs to avoid decisions that harm business climate and the retention and creation of jobs. (A strong economy and the jobs that go with it are good for public health.)

Closing Comments:


On average CICC member companies responding to a 2004 survey have each operated facilities in California for more than 58 year. These companies generally report that their plants are in excellent working order and a number of respondents report their CA operation “set the bar” when it comes to quality, efficiency, and environmental performance. Still these facilities are under tremendous pressures from externalities. Thirty-eight (38%) of the respondents report having closed or relocated one or more of their California facilities, while 40% indicate they are considering similar moves. Fifty percent (50%) of CICC member companies have eliminated jobs in past 2 years in order to remain competitive.

As the BDOs identify where there are gaps in the area of precaution and take steps to address those gaps, it is critical that the Agency and BDOs be cognizant of the benefits of the product or action and the impacts on business climate and job creation and retention.

CICC calls to your attention to the Alternative Opinion at Section VIII of the Advisory Committee’s report which includes an explanation of CCEEB’s concerns regarding some issues that may arise in the discussion regarding precaution (e.g., the precautionary principle, and mandated chemical/product or process substitution based on alternatives assessments). CICC agrees with CCEEB’s comments and appreciates consideration of same by CIWMB and Cal/EPA Staff.

The Chemical Industry Council appreciates the opportunity to comment on this matter and looks forward to becoming a more active participant in discussions with CIWMB, Cal/EPA, and other stakeholders. If you have any questions or require further clarification of the above, please contact John Ulrich (916) 989-9692 or e-mail jrulrich@comcast.net.

Sincerely,



John R. Ulrich, Sr. Consultant
Representing the Chemical Industry Council of CA

cc: Terry Tamminen, Cabinet Secretary, Office of the Governor
James Branham, Undersecretary Cal/EPA
L. William Hegland, General Manager CICC